Herring Networks, Inc.
4757 Morena Blvd. San Diego, CA 92117
Ph: 858-270-6900 Fax: 858-270-6901

October 3, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comcast Corporation and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Applications, MB Docket No. 14-57 and Proposed Transfer of Control of DirecTV to AT&T Inc., MB Docket No. 14-90

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, along with DA 14-803, this ex parte notice is filed on behalf of Herring Networks, Inc. On October 1, 2014, Charles Herring, President of Herring Networks, Inc. and PC Koch of PC Koch & Associates, met with Gigi Sohn, Special Counsel for External Affairs, Office of the Chairman, Maria Kirby, Legal Advisor, Office of the Chairman, Hillary Burchuk, Trial Attorney, Office of General Counsel, and Regina Black, Intern, Office of the Chairman.

Mr. Herring provided hard copies of the five ex parte comments previously filed by Herring Networks, Inc., copies attached. Mr. Herring provided the above named representatives of the Office of the Chairman with oral summaries of the five filings. The filings are noted as:

- Comments dated August 25, 2014, Re: Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") Transaction, MB Docket Number 14-57, Prevent Comcast from Negotiating and Influencing Bright House Carriage Decisions.

- Comments dated August 25, 2014, Re: Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") Transaction, MB Docket Number 14-57, Divesture by Comcast of In Demand.

- Comments dated August 25, 2014, Re: Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") Transaction, MB Docket Number 14-57, Independent Programming Networks.

Herring Networks, Inc.

4757 Morena Blvd. San Diego, CA 92117

Ph: 858-270-6900 Fax: 858-270-6901

- Comments dated August 25, 2014, Re: Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") Transaction, MB Docket Number 14-57, Domestic National Cable News Networks.

- Comments dated September 16, 2015, Re: Comments of Herring Networks, Inc.

Mr. Herring expressed the need for the FCC to consider the Bright House subscriber numbers in its calculations should Bright House rely upon Comcast to negotiate its programming agreements post-merger. Mr. Herring articulated the belief of his company that consumers would benefit with more diverse programming offering should Comcast not negotiate programming affiliation agreements on behalf of Bright House, (Spinco or Charter) post-merger.

Mr. Herring urged the Commission to take a strong look at the ownership and workings of the entity known as *In Demand*. Mr. Herring suggests that Comcast should divest of its ownership interest in and management of In Demand post-merger.

Mr. Herring proposed that the Commission should consider a merger condition requiring Comcast to divest of its national cable holdings; else two merger conditions should be considered for independent national programmers with proven market viability and domestic national news channels.

As an independent and family owned national cable programmer, Mr. Herring expressed the company's positive experiences and the fair consideration extended by the Telco video providers when seeking distribution, including from AT&T U-verse TV.

Mr. Herring urged the Commission to act swiftly and favorably on the application for transfer of control of DirecTV to AT&T.

If there are any questions, please feel free to contact the undersigned.

Respectfully submitted,

Charles P. Herring

Charles P. Herring
President
Herring Networks, Inc.

Cc: Regina Black (Regina.Black@fcc.gov), on behalf of the Office of the Chairman
Gigi Sohn (Gigi.sohn@fcc.gov)
Best Copy and Printing, Inc. (fcc@bcpiweb.com)
Venessa Lemme (vanessa.lemme@fcc.gov)

AWE
A WEALTH OF ENTERTAINMENT

OAN
One America News Network

Herring Networks, Inc.

4757 Morena Blvd. San Diego, CA 92117
Ph: 858-270-6900 Fax: 858-270-6901

Brendan Holland (Brendan.holland@fcc.gov)
Christoper Sova (christoper.sova@fcc.gov)
Jim Bird (transactionteam@fcc.gov)

One America NEWS NETWORK

AWE A WEALTH OF ENTERTAINMENT

August 25, 2014

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comcast Corporation ("Comcast") and Timer Warner Cable Inc. ("TWC") Transaction, MB Docket Number 14-57, Prevent Comcast from Negotiating and Influencing Bright House Carriage Decisions

Dear Chairman Wheeler,

Herring Networks Inc. ("Herring") is a national cable programming company. Herring currently owns and operates two national cable services namely AWE, a 24/7 lifestyle and entertainment company and One America News Network, a credible source for national and international news 24/7.

I write to you regarding the enhanced tendency for discriminatory and anticompetitive behavior by Comcast post a Comcast – TWC merger should Comcast be allowed to handle programming contract negotiations for Bright House Networks. Based upon practices observed in the industry, direct statements made by Comcast senior management during FCC complaint proceedings, and numerous carriage access complaints filed by a plethora of unaffiliated programming networks, Comcast states and demonstrates a practice of treating its own programming services like "siblings", providing preferential and discriminatory consideration. Comcast programming channels are able to spend more time with the Comcast cable side than independent networks and receive preferential consideration. Post-merger, an unaffiliated programming network such as Herring would not receive consideration by Bright House unless there was an existing affiliation agreement with Comcast. Thus, Comcast would be controlling the programming carriage decisions for Bright House and an additional 2.1 million customers. Under the current agreement between Time Warner Cable and Bright it is "unusual" for a national programmer to receive carriage with Bright House unless a Time Warner Cable agreement is in place with the programmer. (This point has been well articulated by Bright House's CEO Steve Miron during carriage access complaints before the FCC.)

HERRING NETWORKS, INC.

4757 Morena Blvd, San Diego, CA 92117
Phone: 858-270-6900 Fax: 858-270-6901

Bright House, as a top ten MVPD, with over 2 million subscribers in key DMAs, clearly has the ability to effectively negotiate programming agreements moving forward.

More important, a homogenous programming lineup, determined by deals Comcast has negotiated with its own programming networks and chosen other networks, is not in the public's best interest. Diversity in the market place services the public's best interest and enhances competition benefiting consumers. Regional MVPDs such as Bright House better serve its customer base if it decides what programming networks best resonate with its customer base. Further, independent networks that have not been able to conclude an affiliation agreement with Comcast can survive by gaining subscribers in regional markets such as Bright House's operating regions.

Over the last ten years, a number of new MVPD entrants have successfully launched services starting with zero subscribers, including, but not limited to SureWest, Centurylink, Cincinnati Bell, and numerous others. To argue that Bright House can't effectively negotiate its own affiliation agreements with programmers with an existing base of over 2 million subscribers, simply doesn't hold water.

Herring urges a thorough examination of the proposed arrangement between Bright House and Comcast, along with Spinco and Charter, with respect to Comcast negotiating affiliation agreements with programmers on behalf of other entities

To minimize the concern of discriminatory and anticompetitive behavior and to enhance the diversity of programming and programming services in the interest of the public, Herring Networks, Inc. strongly recommends that you require Comcast to meet the following conditions for approval of its merger with TWC:

1. Comcast shall not negotiate programming affiliation agreements on behalf of Bright House, (Spinco or Charter). For clarity, Bright House shall not have the ability to utilize Comcast agreements for carriage upon the on closure of the merger.

As FCC Chairman, our leadership on this issue is critical to avoiding potential anticompetitive and discriminatory behavior by Comcast. Further, enhancing programming competition and diversity in the marketplace benefits consumers that are already facing rising cable bills and meaningless choices.

HERRING NETWORKS, INC.

4757 Morena Blvd, San Diego, CA 92117
Phone: 858-270-6900 Fax: 858-270-6901

One America NEWS NETWORK

AWE A WEALTH OF ENTERTAINMENT

I welcome the opportunity to further discuss this critical issue with you, your staff, and other offices at the FCC.

Sincerely,

Charles P. Herring
President
Herring Networks, Inc.
(858) 270-6900

One America NEWS NETWORK

AWE A WEALTH OF ENTERTAINMENT

August 25, 2014

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comcast Corporation ("Comcast") and Timer Warner Cable Inc. ("TWC") Transaction, MB Docket Number 14-57, Divesture by Comcast of In Demand

Dear Chairman Wheeler,

Herring Networks Inc. ("Herring") is a national cable programming company. Herring currently owns and operates two national cable services namely AWE, a 24/7 lifestyle and entertainment company and One America News Network, a credible source for national and international news 24/7.

I write to you regarding the enhanced tendency for discriminatory and anticompetitive behavior by In Demand, LLC ("In Demand") post Comcast – TWC merger. In Demand has a long history of alleged anticompetitive behavior including no less than a combined four program access and carriage access complaints filed at the FCC by MVPDs and an independent, family owned national cable network, specifically Herring, all while a senior Comcast programming representative acted as the chairman of the board of directors for In Demand. Comcast, TWC, Cox Communications, and Bright House (via Time Warner Entertainment – Advanced Newhouse partnership) have historically had key programming staff members of these four leading cable companies oversee the board of directors of In Demand. The working relationship of these four leading cable companies to guide the efforts of In Demand leads to the natural tendency to serve their own best interests, arguably, at times, at the detriment of non In Demand affiliated MVPDs, independent programmers and programming services, and the public interest. Herring urges a thorough examination of In Demand, its management and board, and impact to other MVPDs, independent programming services, and the public post a Comcast – TWC merger.

HERRING NETWORKS, INC.

4757 Morena Blvd, San Diego, CA 92117
Phone: 858-270-6900 Fax: 858-270-6901

One America NEWS NETWORK

AWE A WEALTH OF ENTERTAINMENT

To minimize the concern of anticompetitive behavior and protect the public interest, Herring Networks, Inc. strongly recommends that you require Comcast to meet the following conditions for approval of its merger with TWC:

1. Comcast shall divest of its ownership interest in In Demand upon closure of the merger.

2. Comcast employees shall withdrawal from any board and management positions and any and all other positions held with In Demand.

As FCC Chairman, your leadership on this issue is critical to avoiding potential anticompetitive behavior by Comcast negatively impacting other MVPDs unaffiliated with In Demand, independent programming entities such as Herring, and the public.

I welcome the opportunity to further discuss this critical issue with you, your staff, and other offices at the FCC.

Sincerely,

Charles P. Herring
President
Herring Networks, Inc.
(858) 270-6900

HERRING NETWORKS, INC.
4757 Morena Blvd, San Diego, CA 92117
Phone: 858-270-6900 Fax: 858-270-6901

One America NEWS NETWORK

AWE
A WEALTH OF ENTERTAINMENT

August 25, 2014

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comcast Corporation ("Comcast") and Timer Warner Cable Inc. ("TWC") Transaction, MB Docket Number 14-57, Domestic National Cable News Networks

Dear Chairman Wheeler,

Herring Networks Inc. ("Herring") is a national cable programming company. Herring currently owns and operates two national cable services, namely AWE, a 24/7 lifestyle and entertainment company, and One America News Network, a credible source for national and international news 24/7.

I write to you regarding the enhanced tendency for discriminatory and anti-competitive behavior by Comcast and our grave concerns post a Comcast – TWC merger. Based upon practices observed in the industry, direct statements made by Comcast senior management during FCC complaint proceedings, and numerous carriage access complaints filed by a plethora of unaffiliated programming networks, Comcast states and demonstrates a practice of treating its own programming services like "siblings", providing preferential and discriminatory consideration. Comcast programming channels are able to spend more time with the Comcast cable side than independent networks and receive preferential consideration.

The FCC has recognized Comcast's desire and actions to protect its own cable news services to the point that the FCC implemented a merger condition in the Comcast – NBCU merger to address discriminatory conduct against Bloomberg Network when it comes to channel neighborhood place.

There may be nothing more important to our Nation than protecting the diversity and alternative voices when it's comes to our national TV news outlets. Informed citizens and healthy debate

HERRING NETWORKS, INC.

4757 Morena Blvd, San Diego, CA 92117
Phone: 858-270-6900 Fax: 858-270-6901

One America News Network

AWE A WEALTH OF ENTERTAINMENT

are fundamental to our democracy. With Comcast expected to reach 30 million subscribers, while owning and operating MSNBC, CNBC, and NBC, along with its various owned and operated regional broadcasters, a strong and meaningful merger condition must be in place. An off-set to Comcast news channels is warranted. History has shown the difficulties in implementing and enforcing the Bloomberg condition.

The FCC should also carefully and thoroughly review the tremendous additional influence Comcast has in shaping our news and influencing viewers. For example, political opinion commonly appears on numerous Comcast networks that are in line with the political leanings of MSNBC and the tremendous support Comcast has extended to liberal politicians. For example, The Tonight Show's former host, Jay Leno, who was friendly to the GOP, was replaced with Jimmy Fallon, who has shown liberal leanings similar to MSNBC. Further, it should be taken into consideration the tremendous lobbying influence, including numerous former government officials, and the lobbying expenditures of Comcast. For 2014, Comcast is expected to set lobbying expenditure records, landing as one of the top lobbying companies by spending in our nation. Strong consideration to appropriate off-sets to Comcast's point-of-view is warranted.

To minimize the concerns of discriminatory and anticompetitive behavior and to enhance the diversity of programming and programming services in the interest of the public, Herring Networks, Inc. strongly recommends that you require Comcast to meet the following conditions for approval of its merger with TWC:

1. If a national cable news network meets all of the following criteria below, then Comcast shall extend carriage within 90 days of closing the merger.

    a. Network is <u>not</u> currently launched on any Comcast System.
    b. Network is a 24/7 <u>US owned</u> national/international cable news service.
    c. The network is launched and carried in the US across at least 7 million homes.
    d. The network is launched on at least two of the following "Launched MVPDs":
        i. AT&T U-Verse TV, DirecTV, Dish Network, Verizon FiOS TV.
    e. The network produces a minimum of 100 hours of live content per week.

2. Comcast shall extend carriage as follows:
    a. Carriage term of 10 years.
    b. Terms and conditions per the largest Launched MVPD.
    c. Extended carriage near MSNBC, within 5 channel numbers, in the news neighborhood.

HERRING NETWORKS, INC.

4757 Morena Blvd, San Diego, CA 92117
Phone: 858-270-6900 Fax: 858-270-6901

d. Carriage across all Comcast post merger subscribers with a penetration of or greater than the networks largest Launched MVPD.

3. Or alternatively, require Comcast to divest of its national cable news holdings.

As FCC Chairman, your leadership on this issue is critical to avoiding potential anti-competitive and discriminatory behavior by Comcast. Further, enhancing programming competition and diversity in the marketplace benefits consumers that are already facing rising cable bills and meaningless choices.

I welcome the opportunity to further discuss this critical issue with you, your staff, and other offices at the FCC.

Sincerely,

Charles P. Herring
President
Herring Networks, Inc.
(858) 270-6900

One America NEWS NETWORK

A WEALTH OF ENTERTAINMENT

August 25, 2014

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comcast Corporation ("Comcast") and Timer Warner Cable Inc. ("TWC") Transaction, MB Docket Number 14-57, Independent Programming Networks

Dear Chairman Wheeler,

Herring Networks Inc. ("Herring") is a national cable programming company. Herring currently owns and operates two national cable services, namely AWE, a 24/7 lifestyle and entertainment company, and One America News Network, a credible source for national and international news 24/7.

I write to you regarding the enhanced tendency for discriminatory and anti-competitive behavior by Comcast and our grave concerns post a Comcast – TWC merger. Based upon practices observed in the industry, direct statements made by Comcast senior management during FCC complaint proceedings, and numerous carriage access complaints filed by a plethora of unaffiliated programming networks, Comcast states and demonstrates a practice of treating its own programming services like "siblings", providing preferential and discriminatory consideration. Comcast programming channels are able to spend more time with the Comcast cable side than independent networks and receive preferential consideration. The lack of program and carriage access complaints filed against AT&T and Verizon, compared to the numerous program and carriage access complaints filed against Comcast, is a testament to the natural propensity for a vertically integrated MVPD to favor its own programming at the expense of independent networks and the consumer.

The FCC implemented a condition in the Comcast – NBCU merger to assist minority owned networks. Unfortunately, a condition to assist existing independent networks, which have been launched for a number of years, but haven't received carriage by Comcast, never materialized. The counter-argument is that there is an FCC complaint process in place. Yet, with numerous

One America NEWS NETWORK

AWE A WEALTH OF ENTERTAINMENT

complaints filed by a wide variety of independent networks, the process hasn't corrected any alleged discrimination in favor of an independent network. Unfortunately, there are no meaningful changes to the complaint process, yet the merger is expected to be approved within the next nine months.

The importance to the survival of an independent network in gaining carriage on the big cable networks has been well known. Former FCC Commission Michael Copps, while an active Commissioner in August 2009 stated:

> *"If an aspiring cable channel cannot win carriage on these big concentrated networks, its fate is sealed. It's doomed."* (Source: Seattle Times, Editorials/Opinions, Aug. 31, 2009)

To minimize the concerns of discriminatory and anticompetitive behavior and to enhance the diversity of programming and programming services in the interest of the public, Herring Networks, Inc. strongly recommends that you require Comcast to meet the following conditions for approval of its merger with TWC:

1. If a national cable network meets all of the following criteria below, then Comcast shall extend carriage within 90 days of closing the merger.

    a. Network is <u>not</u> currently launched on any Comcast System.
    b. Network is a 24/7 <u>US owned</u> 24/7 national cable network.
    c. The network has been launched 24/7 for more than 10 years (including name variations only, with the same themed programming)
    d. The network is launched and carried in the US across at least 10 million homes.
    e. The network is launched on at least two of the following "Launched MVPDs":
        i. AT&T U-Verse TV, DirecTV, Dish Network, Verizon FiOS TV.

2. Comcast shall extend carriage as follows:
    a. Carriage term of 10 years.
    b. Terms and conditions per the largest Launched MVPD.

3. Or alternatively, require Comcast to divest of its national cable network holdings.

As FCC Chairman, your leadership on this issue is critical to avoiding potential anti-competitive and discriminatory behavior by Comcast. Further, enhancing programming competition and diversity in the marketplace benefits consumers that are already facing rising cable bills and meaningless choices.

HERRING NETWORKS, INC.

4757 Morena Blvd, San Diego, CA 92117
Phone: 858-270-6900 Fax: 858-270-6901

One America NEWS NETWORK

A WEALTH OF ENTERTAINMENT

I welcome the opportunity to further discuss this critical issue with you, your staff, and other offices at the FCC.

Sincerely,

Charles P. Herring
President
Herring Networks, Inc.
(858) 270-6900

HERRING NETWORKS, INC.

4757 Morena Blvd, San Diego, CA 92117
Phone: 858-270-6900 Fax: 858-270-6901

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of AT&T, Inc. and DIRECTV for Consent to Assign Licenses or Transfer Control of Licenses and Authorizations	)))	MB Docket No. 14-90
	)	
Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and Spinco to Assign and Transfer Control of FCC Licenses and Other Authorizations	))))	MB Docket No. 14-57

COMMENTS OF HERRING NETWORKS, INC.

Herring Networks, Inc. ("Herring Networks") submits these comments in response to the Commission's public notice regarding the applications of AT&T Inc. ("AT&T") and DIRECTV to transfer control of FCC licenses and other authorizations.[1] Herring Networks owns and operates two national cable services: AWE (formerly WealthTV), a 24/7 lifestyle and entertainment network, and One America News Network, a credible source for national and international news. AWE recently celebrated its ten-year anniversary, while One America News Network launched in 2013 to fill a void in existing cable news networks.

Herring Networks encourages the FCC to swiftly approve the transfer of DIRECTV's licenses to AT&T. As an independent and family-owned national cable programmer, Herring Networks is well-positioned to assess the benefits and challenges presented by the combination of two multichannel video programming distributors ("MVPDs"). Herring Networks has seen first-hand how AT&T's U-Verse service has acted as a disruptive force in the MVPD

---

1 *Commission Seeks Comment on Applications of AT&T Inc. and DIRECTV to Transfer Control of FCC Licensees and Other Authorizations*, Public Notice, MB Docket No. 14-90, DA 14-1129 (rel. Aug. 7, 2014).

marketplace and believes that expanding AT&T's reach as a distributor of video programming will enhance competition and benefit consumers and independent programmers, such as Herring Networks. Because AT&T is focused on the distribution, not the production, of content, AT&T can make independent, consumer-driven decisions about what programming to carry rather than worrying about protecting the interests of commonly-owned programmers. This has allowed AT&T to serve as an important counterweight to vertically-integrated cable networks such as Comcast and Time Warner Cable. As the Commission simultaneously considers the proposed merger between those two entities, the value of strengthening a competitive provider like AT&T is readily apparent, particularly in contrast to the harms that would come from combining the industry's largest vertically-integrated providers. Because the proposed transactions are not equal, the FCC should rapidly approve AT&T's acquisition of DIRECTV while providing careful scrutiny to Comcast's acquisition of Time Warner Cable.

I. AT&T HAS A PROVEN RECORD OF PROVIDING FAIR TREATMENT TO INDEPENDENT PROGRAMMERS SUCH AS HERRING NETWORKS.

Independent programmers, like Herring Networks, face tremendous obstacles to obtaining carriage, which is critical to their survival. Although networks like AWE and One America News Network provide unique programming that has proven extremely popular with cable subscribers, it can be difficult, if not impossible, for these networks to overcome entrenched interests that have ulterior motives to maintain the status quo and not promote the development of new networks. Many MVPDs simply will not consider the value proposition that carriage of independent networks presents.

AT&T, for its part, has always provided open and fair consideration of the benefits of offering independent programming networks, such as AWE and One America News Network, to subscribers of its U-verse TV service. Ever since the inception of the U-verse TV service in

2006, AT&T has demonstrated an appreciation for the value of program diversity. Rather than just copying the channel lineups of its more established competitors, AT&T has embraced opportunities to include new, diverse programming voices.

Herring Networks views AT&T as a partner in its efforts to provide unique programming that is not available on any other channel. U-verse added AWE to its channel lineup shortly after the service launched, and U-verse subscribers have enjoyed AWE programming ever since. When Herring Networks saw an opportunity to launch a news network that departed from the opinion-driven offerings of other cable news channels, it found a welcome reception from AT&T. AT&T has always negotiated with Herring Networks fairly and in good faith, and as a result, U-verse customers have access to some of the most diverse program offerings of any MVPD in the country.

II. A STRENGTHENED AT&T WILL SERVE AS AN IMPORTANT COUNTER-WEIGHT TO VERTICALLY-INTEGRATED CABLE PROVIDERS.

Vertical integration among some of the nation's largest cable providers serves as one of the greatest threats to the diversity of programming available to consumers. As the FCC has recognized, when the same entity controls the upstream supply of content and the downstream distribution of that content, it has an ability and incentive to use its dominant distribution position "to harm other competing video programming firms and harm competition in video programming."[2] The Commission has recognized that this is particularly true for Comcast, whose market share in some of the nation's highest-ranked DMAs is considerably greater than its national market share would indicate.[3] If the Commission permits Comcast to acquire Time Warner Cable's systems in New York and Los Angeles, Comcast's will further solidify its

---

[2] *See Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, 26 FCC Rcd. 4238 ¶ 116 (2011).

[3] *Id.*

dominance in the largest and most-influential DMAs, making it that much more difficult for an independent programmer like Herring Networks to survive without carriage on those systems. Accordingly, Herring Networks agrees with the concerns expressed by a number of independent programmers about the devastating effect that the Comcast-Time Warner Cable transaction could have on the ability of independent programmers to survive without distribution on Comcast – threatening program diversity nationwide.[4]

It is not enough for the FCC to prevent ***additional*** distortion in the video programming marketplace; it must also address the present imbalance. Chairman Wheeler recently extolled the virtues of competition in the Communications industry, declaring that "where greater competition can exist, we will encourage it."[5] Allowing AT&T to extend its positive influence over the market for video programming will increase competition and serve as a critical counterweight to the current dominance of vertically-integrated players such as Comcast and Time Warner Cable.

Although U-Verse and other telephone MVPDs provide an important distribution platform for independent programmers such as Herring Networks, their scope, and therefore ability to drive the market, pales in comparison to the largest MVPDs. An AT&T-owned DIRECTV would change that calculus, providing a competitive-minded provider like AT&T

---

4 *See* Comments of Back9Network, MB Docket No. 14-57 (Aug. 25, 2014) ("A combined Comcast-TWC would leave start-up networks with only one option for cable carriage in the markets most desirable for advertisers. And the combined company would have a vast horizontal footprint, giving it extraordinary power to block competing channels and to promote its own networks."); Comments of Entravision Communications Corp., MB Docket No. 14-57 (Aug. 25, 2014) (since the 1992 Cable Act, "the benefits of quality independent programming have only increased in the wake of growing industry consolidation"); Comments of Tennis Channel, Inc., MB Docket No. 14-57 (Aug. 25, 2014) ("This combination creates an even greater capacity for Comcast to disadvantage rival programmers--a threat that is further magnified by Comcast's emergence as a dominant retailer and wholesaler of TV Everywhere and VOD services"); Comments of TheBlaze, Inc., MB Docket No. 14-57 (Aug. 25, 2014) ("If Comcast gets bigger, the incentive and ability to protect and foster its owned networks will be even greater."); Comments of WeatherNation TV, Inc., MB Docket No. 14-57 (Aug. 25, 2014) (recognizing that "[n]o one linear national programming network can survive without access to 30 million households").

5 *See* Prepared Remarks of FCC Chairman Tom Wheeler, 2014 CTIA Show (Sept. 9, 2014), *available at* http://www.fcc.gov/document/chairman-wheeler-remarks-2014-ctia-show-super-mobility-week.

with the scale (both in terms of subscribers and geographic reach) to compete with the largest vertically-integrated players. This would allow AT&T to serve as a truly disruptive force, causing vertically-integrated operators to rethink their discriminatory practices and, instead, to consider carriage of independent programmers on the merits. The result will be a more competitive and more diverse video programming market place that can better serve the needs of the nation's consumers.

III. CONCLUSION

Given the substantial pro-competitive benefits of allowing AT&T to acquire DIRECTV, the FCC should quickly approve this transaction. These pro-competitive benefits apply no matter how the Commission addresses the Comcast-Time Warner Cable proposal, and the agency should resist the temptation to group these transactions together. Rather, the FCC should prioritize approval of the AT&T-DIRECTV transaction and then turn its attention to the much more complicated and troublesome merger between Comcast and Time Warner Cable.

HERRING NETWORKS, INC.

By: Charles P. Herring

Charles P. Herring
President
4757 Morena Blvd.
San Diego, CA 92118
P: (858) 270-6900
F: (858) 270-6901

September 16, 2014